

<sup>1</sup> On June 19, 2008, the Court signed an order granting an unopposed motion for continuance in the case to October 6, 2008 and extended the deadlines in the Scheduling Order.

Defendants requested leave of court out of an abundance of caution and in respect to the Court and its Scheduling Order.

## II.

Defendants have not changed the substance and scope of their Motion for Summary Judgment. Defendants have always maintained that the controlling law in this case, *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998), mandates that damages may not be recovered for teacher-student sexual harassment in an implied private action under Title IX **unless** a school district official who at a minimum has authority to institute corrective measures on the district's behalf **has actual notice of, and is deliberately indifferent to, the teacher's misconduct**. The supplement to Defendants' Motion for Summary Judgments merely provides competent summary judgment evidence in support of Defendants' position.

## III.

Plaintiff will not be prejudiced if Defendants are permitted to file the supplement to their motion for summary judgment. Plaintiff claims that she will be "required to file additional briefing and summary judgment evidence, at considerable unnecessary time and expense." However, Plaintiff *has already* filed additional briefing and summary judgment evidence in opposition to Defendants' Motion for Summary Judgment **after the deadline for filing responses passed and without leave of court**. (*Plaintiff's Supplemental Briefing in Opposition to Defendants' Motion for Summary Judgment*, Docket No. 63, filed on June 26, 2008 and *Plaintiff's Second Supplemental Response in Opposition to Defendants' Motion for Summary Judgment*, Docket No. 67, filed on July 14, 2008).

IV.

Defendants' Motion for Leave to file Supplement to Motion for Summary Judgment should be granted in the interest of justice and judicial economy.

V.

For these reasons, Defendants ask the court to grant their Motion for Leave to file their Supplement to Motion for Summary Judgment. In the event the court denies Defendants' Motion for Leave to File Supplement to Their Motion for Summary Judgment, Defendants request the court to strike and/or disregard Plaintiff's supplemental briefing, Docket Nos. 63 and 67.

Respectfully submitted,

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By: /s/ *Melody G. Chappell*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on the following counsel of record as follows:

VIA E-FILE NOTIFICATION

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DATED: July 18, 2008.

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